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No. 881

In the

Supreme Court of the United States

OCTOBER TERM, 1957

NOS. —— AND ——

WILLIAM AMLIN and DARRELL AMLIN, d/b/a AMLIN CARTAGE, H. BONDY, d/b/a BONDY CARTAGE, EDMUND GOYEAU, LEO GOYEAU and OSCAR GOYEAU, d/b/a ED. GOYEAU & SONS, CHARLES HINTON & CO., LTD., HUSBAND INTERNATIONAL TRANSPORT, LTD., THE E. W. LANCASTER CO., LTD., McCOURT CARTAGE, WILLIAM HAROLD MORRICE, d/b/a MORRICE CARTAGE COMPANY, OVERLAND EXPRESS, LTD., PARENT CARTAGE, LTD., THE WINDSOR TRUCK AND STORAGE CO., LTD., DIRECT-WINTERS TRANSPORT, LTD., INTER-CITY TRUCK LINES, LTD. and CONSOLIDATED TRUCK LINES, LTD., APPELLANTS,

v.

PETER VERBEEM, doing business as PETERS CARTAGE, APPELLEE

WILLIAM AMLIN and DARRELL AMLIN, d/b/a AMLIN CARTAGE, H. BONDY, d/b/a BONDY CARTAGE, EDMUND GOYEAU, LEO GOYEAU and OSCAR GOYEAU, d/b/a ED. GOYEAU & SONS, CHARLES HINTON & CO., LTD., HUSBAND INTERNATIONAL TRANSPORT, LTD., THE E. W. LANCASTER CO., LTD., McCOURT CARTAGE, WILLIAM HAROLD MORRICE, d/b/a MORRICE CARTAGE COMPANY, OVERLAND EXPRESS, LTD., PARENT CARTAGE, LTD., THE WINDSOR TRUCK AND STORAGE CO., LTD., DIRECT-WINTERS TRANSPORT, LTD., INTER-CITY TRUCK LINES, LTD. and CONSOLIDATED TRUCK LINES, LTD., APPELLANTS,

v.

DONALD GOUIN, doing business as DON'S TRANSPORTS AND CARTAGE, APPELLEE

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

APPELLANTS' BRIEF IN OPPOSITION TO MOTION TO AFFIRM

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Appellees have filed a Motion to Affirm the decision of the District Court in the subject causes upon the ground that the question on which the decision of the causes depends is so unsubstantial as to need no further argument. This contention of unsubstantialness appears to be grounded in the two following arguments:

(1) That the volume of motor carrier operations here involved is "insignificant"; and

(2) That the Appellants' position with regard to its proposed construction of Section 203(b)(8) is clearly without any merit.

Appellants will direct themselves to the two foregoing arguments in this Brief.

ARGUMENT

Appellees argue that the extent of the transportation operations involved in these causes is so "insignificant" that this Court should not grant plenary consideration. Appellees' Motion to Affirm does not set forth any evidence in support of this argument of "insignificance", and, undoubtedly, this absence of evidence is due to the fact that there was no need to develop such evidence in the proceedings before the Commission and the District Court.

Nevertheless, there are certain positive indications in the record that do indicate that the motor carrier operations here in question are substantial in nature and quantity. In the first place, the Lower Court itself noted that, "It is common knowledge that the United States borders at Mexico and Canada are dotted with 'twin-cities',

one of which is on each side of the border."[1] Reference to a map demonstrates beyond question that the United States has several thousands of miles of common boundaries with Canada and Mexico. Along those thousands of miles of common boundaries, there is literally a multitude of such twin-cities, and the instant appeals directly affect motor carrier operations at each of those points.

Secondly, it is informative to note that the evidence in the instant causes affirmatively establishes that there is a large number of motor carriers engaged in transporting the subject traffic in foreign commerce at just *one* of the gateways, namely, Detroit-Windsor. In addition to the fourteen Intervening Defendants performing such motor carrier services, there are several others, as pointed out in Appellees' Brief on page 4.

If the subject motor carrier operations are so "insignificant" as urged by Appellees, there is cause to wonder why there is such a large number of carriers actually engaged in handling such traffic.

It is, also, significant to note that the World Almanac, 1958, p. 670, discloses that there was in excess of 7 billion dollars of trade between the United States and Canada in 1956 and in excess of 1 billion dollars in trade between the United States and Mexico in 1956. While all of this trade did not move via motor carrier and, obviously, involved points of origin and destination far beyond the so-called twin-cities, nevertheless, such statistics affirmatively reflect the tremendous volume of trade moving between such countries. Having in mind the large number of industrial municipalities which are adjacent to one another along the boundaries of the said countries, it is more

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[1] Appendix A, Jurisdictional Statement, p. 27.

than apparent that we are here dealing with foreign commerce of substantial quantity and importance.

The second argument of Appellees in support of their Motion to Affirm is that Section 203(b)(8) is so "clear and unambiguous" on its face that there is no need for this Court to give any deeper consideration to the proper construction of this section. Appellees seem to argue that the unqualified use of the word "municipalities" in Section 203(b)(8) precludes any construction of that word short of all "municipalities" in the world. From this premise, they argue that the Appellants would urge this Court to insert limiting language such as "within the United States" immediately following the word "municipalities" as found in the subject section.

What constitutes a clear and unambiguous expression is oftentimes the subject of reasonable dispute itself. Appellants would first point out that no language in Section 203(b)(8) precludes a construction of that section limiting its effect to municipalities located in the United States. In other words, the construction urged by Appellants is not inconsistent with or opposed by any language appearing in said section.

Secondly, the prior decisions of this Court do not support Appellees' insistence that the broadest possible construction of statutory language is the *only* possible construction. In *U. S. v. American Trucking Associations*, 310 U. S. 534, 84 L. Ed. 1345, (1940), this Court was required to construe Section 204(a) of the Interstate Commerce Act which provided that it shall be the duty of the Commission to regulate common, contract and private carriers with respect to the "qualifications and maximum hours of service of employees * * *" of such carriers. The Interstate Commerce Commission had construed Section 204(a) so as to limit its jurisdiction to prescribing

qualifications and maximum hours of service *only for employees whose duties are related to safety of operations.* Certain motor carrier associations petitioned a three-judge District Court to compel the Commission to take jurisdiction and consider the establishment of qualifications and hours of service of *all* employees of such carriers. The District Court reversed the Commission in its construction of Section 204(a), and, upon appeal to this Court, the District Court was reversed and the original decision of the Commission affirmed. In doing so, this Court stated:

> "There is no invariable rule for the discovery of that intention. To take a few words from their context and with them thus isolated to attempt to determine their meaning, certainly would not contribute greatly to the discovery of the purpose of the draftsmen of a statute, particularly in a law drawn to meet many needs of a major occupation" (at p. 541).

This Court reviewed Section 204(a) in light of the Congressional intent and placed upon the word "employees" a more limited meaning than might otherwise be reached from mere rules of grammar. In short, the most broad construction of statutory language is not a strait jacket upon the judiciary in the performance of its duty in ascertaining Congressional intent.

In *United States v. Cooper Corporation*, 312 U. S. 600, 85 L. Ed. 1071, (1941), this Court was confronted with the question as to whether Section 7 of the Sherman Act permitted the United States to maintain an action for treble damages. Section 7 provided that such action could be maintained by "any person who shall be injured in his business or property". This Court recognized that the United States is a juristic person in the sense that it has capacity to sue upon contracts made with it or in

vindication of its property rights. In concluding that Section 7 was not intended to apply to the United States, this Court stated as follows:

> "Decision is not to be reached by a strict construction of the words of the Act, nor by the application of artificial canons of construction. On the contrary, we are to read the statutory language in its ordinary and natural sense, and if doubts remain, resolve them in the light, not only of the policy intended to be served by the enactment, but, as well, by all other available aids to construction" (at p. 605).

This limiting construction of Section 7 was predicated upon two bases:

(1) The general rule that legislation does not have application to the sovereignty, unless clearly indicated; and

(2) The assumption that the term "person" was employed by the Congress throughout the Sherman Anti-Trust Act in the same, and not in different, senses.

Both of these bases are directly applicable in the instant case. Just as there is a presumption excepting the sovereignty from application of legislation, there is a presumption that the Congress intends only to deal with land and acts committed within the United States. See, *Sandberg v. McDonald*, 248 U. S. 185.

Secondly, in *United States v. Cooper, supra*, this Court, in reaching the proper construction of Section 7, looked to other sections of the Sherman Act and there found that the term "person" clearly could not apply to the United States. Thus, this Court reasoned that the term "person" should be construed consistently throughout the Act.

In the case at bar, Section 203(b)(8) of the Interstate Commerce Act provides the limited exemption as to transportation in interstate or foreign commerce,

> "wholly within a municipality or between contiguous municipalities or within a zone adjacent and commercially a part of any such municipality or municipalities * * *."

There can be no question but that the exemption as it relates to transportation "wholly within a municipality" has reference *only* to municipalities in the United States. However, Appellees would urge that this very same term in the immediately succeeding phrase in the same sentence was intended by Congress to mean something different, i. e., municipalities in foreign countries when contiguous to United States municipalities. This Court, in *United States v. Cooper Corporation, supra,* ruled that:

> "It is fair to assume that the term 'person', in the absence of an indication to the contrary, was employed by the Congress throughout the act in the same, and not in different, senses" (at p. 607).

Similarly, it is fair to assume that the term "municipality" was employed by Congress throughout Section 203(b)(8) of the Act in the same, and not in different, senses. There is not the slightest indication that Congress desired to have different and conflicting meanings attached to this term.

The two cases cited above clearly demonstrate the serious error of the Appellees' arguments in the case at bar. Just as the terms "employees" in Section 204(a) of the Interstate Commerce Act and "persons" in Section 7 of the Sherman Act were found by this Court to have been used in a restricted sense by Congress, so the term "municipalities" as used in Section 203(b)(8) of the Interstate